SUPREME COURT OF THE UNITED STATES.

No. 91.

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

BARCLAY AND LIVINGSTON, CLAIMANTS OF 123 PACKAGES OF GLASSWARE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE SOUTHERN DIST. OF NEW YORK.

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J. & G. S. GIDEON, Printers.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States of America, to the judges of the circuit court of the United States, for the southern district of New York, second circuit, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between the United *United* States of America, informants, and 123 Packages of Glassware, Barclay & Livingston claimants—a manifest error hath happened, to the great damage of the said the United States of America, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at the city of Washington, District of Columbia, together with this writ, so that you have the same at Washington on the tenth day of January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this second Monday of January, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-fifth.

JAS. W. METCALF,
Clerk of the Circuit Court of the United States for the Southern district of New York, in the second circuit.

The answer of the honorable Smith Thompson, one of the judges of the circuit court of the United [States] for the southern district of New York, to the within writ, containing the citation, record and proceedings in the within mentioned cause, as appears by the schedules hereunto annexed.

Attest: J. W. METCALF, *Clk.*

By the honorable Smith Thompson, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit—to George Barclay, Anthony Barclay, and Schuyler Livingston, claimants of one hundred and twenty-three packages of glassware.

Whereas the United States of America, by Ogden Hoffman, district attorney of the United States for the southern district of New

York, lately issued out of the Supreme Court of the United States a writ of error, directed to the judges of the circuit court of the United States for the southern district of New York, in the second circuit, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judges thereof, between the said Barclay and Livingston, claimants and plaintiffs in error, and the said United States of America, defendants in error, a manifest error hath happened, to the great damage of the said United States of America; and whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated Supreme Court of the United States, to be held in the District of Columbia, at the city of Washington, on the second Monday of January next: You are, therefore, hereby cited to appear before the said Supreme Court, at the city of Washington, on the said second Monday of January next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the ninth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-seventh.

SMITH THOMPSON.

Due service admitted. F. R. TILLON,
Proctor, &c.

December 9, 1842.

UNITED STATES OF AMERICA,
Southern district of New York, ss:

I, James W. Metcalf, clerk of the circuit court of the United States of America for the southern district of New York, second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file, and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, second circuit, this
[L. S.] ninth day of December, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the said United States the sixty-seventh.

J. W. METCALF, *Clk.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judge
[L. S.] of the district court of the United States, for the southern district of New York, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before

you, or some of you, between the United States of America, informants, against 123 Packages of Glassware, Barclay & Livingston claimants—a manifest error hath happened, to the great damage of the said claimants, as by their complaint appears: we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States, for the southern district of New York, in the second circuit, together with this writ, so that you have the same at the city of New York on the first Monday of April next, in the said circuit court, to be then and there held, that the record and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-fifth.

JAMES W. METCALF,
Clerk of the Circuit Court of the United States for the Southern district of New York, in the second circuit.

The answer of the honorable Smith Thompson, one of the judges of the circuit court of the United States for the southern district of New York, to the within writ, containing the citation, record, and proceedings in the within mentioned cause, as appears by the schedule hereunto annexed.

Attest: J. W. METCALF, *Clerk.*

By the honorable Samuel R. Betts, one of the judges of the circuit court of the United States, for the southern district of New York, in the second circuit—to the United States of America, Ogden Hoffman, esq., U. S. district attorney.

Whereas Messrs. Barclay and Livingston, claimants of 123 packages of glassware, lately issued out of the circuit court of the United States a writ of error, directed to the judges of the district court of the United States for the southern district of New York, stating that in the record and proceedings, as also in the rendition of the judgment of a plea in the said court, before the judge thereof, between the United States of America, informants, and 123 packages of glassware, Barclay & Livingston claimants, a manifest error hath happened, to the great damage of the said claimants; and whereas, for the correction of that error in due manner, the said writ has been issued, returnable at the next stated circuit court of the United States for the southern district of New York, at the city of New York, on the first Monday of April next: You are, therefore, hereby

cited to appear before the said circuit court, at the city of New York, on the said first Monday of April next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand, at the city of New York, in the southern district of New York, in the second circuit, the twenty-sixth day of March, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-fifth.

SAM'L R. BETTS.

Due service of the within citation admitted.

O. HOFFMAN, *U. S. Att'y.*

STATE OF NEW YORK,
Southern district of New York:

Be it remembered that heretofore, to wit, on the fifth day of July, one thousand eight hundred and thirty-nine, came Benjamin F. Butler, Attorney of the United States for the southern district of New York, who prosecuted for the said United States in that behalf, and being present then in court, in his own proper person, in the name and on behalf of the said United States, alleged, informed, and declared as follows, to wit:

That Jesse Hoyt, collector of the customs for the port and district of New York, heretofore, on the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and thirty-nine, at the city of New York, and within the jurisdiction of this court, seized, as forfeited to the use of the United States, the following one hundred and twenty-three packages of goods, wares, and merchandise, that is to say: Sixty casks marked B T G, and numbered from 28 to 87, both numbers inclusive, containing glassware; nineteen casks, marked L G, and numbered from 1 to 19, both numbers inclusive, containing glassware; 24 casks, marked M W, and numbered from 1 to 24, both numbers inclusive, containing glassware; 18 casks, marked B H, and numbered from 1 to 18, both inclusive, containing glassware; 1 cask, marked D C, and numbered 1, containing glassware; and 1 cask, marked G F B, and numbered 1, containing glassware; all which said goods, wares, and merchandise were imported into the United States in a ship or vessel, being a brig, called the Vesper, being the property of some person or persons to the said attorney unknown.

That the aforesaid goods, wares, and merchandise are of the growth, produce, and manufacture of some foreign place or country to the said attorney unknown, and were heretofore, to wit, on the first day of June, one thousand eight hundred and thirty-nine, brought or imported in the said ship or vessel from a foreign port or place to the said attorney unknown, into the port of New York, in the southern district of New York aforesaid, and which said goods, wares, and merchandise were subject to the payment of duties to the United States on being brought and imported as aforesaid.

That an entry of the before mentioned goods, wares, and merchandise, duly signed, was, on the fourth day of June, one thousand eight hundred and thirty-nine, made at the office of the collector of customs of the said port and district of New York, on the importation thereof, and that on such entry being made as aforesaid, a certain invoice of the said goods, wares, and merchandise was produced and left with the said collector; and the said collector, heretofore, on the day and year last aforesaid, caused the said package of goods, wares, and merchandise to be examined, inspected, and appraised, according to the provisions of the several acts of Congress in such case made and provided; and that upon such examination, inspection, and appraisement, the said invoice was found to have been made up with intent, by a false valuation, to evade and defraud the revenue of the United States, in this: that the goods, wares, and merchandise contained in the said one hundred and twenty-three packages, having been procured otherwise than by purchase, the same were charged in the said invoice at a price less than the actual value thereof at the time and place when and where procured, thereby intending to defraud the United States by paying less duty on the said one hundred and twenty-three packages of goods, wares, and merchandise, than the amount which, by law, the said packages of goods, wares, and merchandise were required to pay on the importation thereof into the United States, against the fourth section of the act of Congress approved on the twenty-eighth day of May, one thousand eight hundred and thirty, entitled "An act for the more effectual collection of the import duties."

That an entry of the before mentioned and described goods, wares, and merchandise, duly signed, was, on the fourth day of June, in the year one thousand eight hundred and thirty-nine, made at the office of the collector of the customs of the port and district of the city of New York, on the importation thereof; and that on such entry being made as aforesaid, a certain invoice of the said goods, wares, and merchandise was produced and left with the said collector of the customs; and the said collector of the customs, heretofore, on the day and year last aforesaid, caused the said packages of goods, wares, and merchandise to be examined, inspected, and appraised, according to the provisions of the several acts of Congress in such case made and provided; and that upon such examination, inspection, and appraisement, the said packages and invoice were found, and each of them was found, to have been made with intent, by false valuation, extension, and otherwise, to evade and defraud the revenue of the United States, in this: that the said goods, wares, and merchandise contained in the said packages were charged in the said invoice at a less price than they actually cost the importer thereof, thereby intending to defraud the United States, by paying less duty on the said packages of goods, wares, and merchandise than the amount which the same required to pay by

law on the importation thereof into the United States, against the fourth section of the act of Congress approved on the 28th day of May, in the year one thousand eight hundred and thirty, entitled "An act for the more effectual collection of the import duties."

That the aforesaid goods, wares, and merchandise, being subject to the payment of ad valorem duty to the United States on entry thereof, duly signed, was, on the fourth day of June, one thousand eight hundred and thirty-nine, made in the office of the collector of the customs for the port and district of New York; and that on such entry being made as aforesaid, an invoice of the said goods, wares, and merchandise [was] produced and left with the said collector of the customs; and the said collector, heretofore, on the day and year last aforesaid, caused the said packages of goods, wares, and merchandise to [be] opened, examined, inspected, and appraised, according to the provisions of the several acts of Congress in such case made and provided; and that upon such examination, inspection, and appraisement, the said packages were found to have been made up with intent to evade and defraud the revenue of the United States, contrary to the fourth section of the act of Congress approved on the twenty-eighth day of May, in the year one thousand eight hundred and thirty, entitled "An act for the more effectual collection of the import duties."

And the said attorney, on behalf of the said United States, saith, that by reason of all and singular the premises aforesaid, and by force of the statute in such case made and provided, the aforementioned and described goods, wares, and merchandise became and are forfeited to the use of the said United States.

And that all and singular the premises aforesaid are and were true, public, and notorious, of which due proof being made, the said attorney prays the usual process and motion of this honorable court in this behalf to be made, and that all persons interested in the before mentioned and described goods, wares, and merchandise, may be cited in general and special to answer the premises; and all due proceedings being had, that the said goods, wares, and merchandise, may for the causes aforesaid, and others appearing, be condemned by the definitive sentence and decree of this honorable court, as forfeited to the use of the said United States, according to the form of the statutes of the said United States in such case made and provided.

And the marshal of the southern district of New York, in pursuance of the motion under the seal of the said court to him directed, did give public notice to all persons claiming the said goods, wares, and merchandise, that they be and appear before the said district court of the United States of America for the southern district of New York, to be holden in and for the said district at the city of New York, on the twenty-third day of July then next, at ten o'clock in the forenoon of that day, if the same shall be a day of jurisdiction; otherwise on the first day of jurisdiction thereafter, then and

there to interpose their claims for the same, and to make allegations in that behalf.

On which said twenty-third day of July, George Barclay, Anthony Barclay, and Schuyler Livingston, by Francis R. Tillon, their proctor, appeared in the said district court and filed the claim and answer of the said George Barclay, Anthony Barclay, and Schuyler Livingston, which said claim and answer is as follows:

The said claimants, not confessing or acknowledging all or any part of the matters and things alleged, and propounded by Benjamin F. Butler, on behalf [of] the United States of America, in the information in this cause, do say:

That the said one hundred and twenty-three packages of glassware, respectively marked and numbered as aforesaid in the information mentioned, are bona fide the property of the copartners who compose the firm of Booth & Co., of Sunderland, in England, manufacturers, and *was* sent and consigned by them to these claimants for sale, and that the said claimants are entitled to the possession thereof; and the said claimants further say, that the bill of lading therefor was transmitted to them, and received by them, and that the said one hundred and twenty-three packages of glassware were imported into the port of New York, in and on board of the brig or vessel in that behalf specified; an entry of the said goods, wares, and merchandise, duly signed, was made at the office of the collector of the customs for the port of New York, and that an invoice thereof, on such entry being made, was produced and left with the said collector. But these claimants expressly deny, that the said goods, wares, and merchandise, and the said packages and invoice thereof, or the said entry thereof at the custom house, were made with intent to evade or defraud the revenue of the United States.

The said claimants further say, that the same persons who compose the said firm of Booth & Co. are respectable manufacturers, are residing at Sunderland aforesaid; and these claimants do verily believe, and therefore aver, that the said one hundred and twenty-three packages of glassware were invoiced fairly, and at their actual and true cost.

And they the said claimants further say, and charge, that the several goods, wares, and merchandise, in the said information mentioned, did not, nor did any of them, or any part thereof, become forfeited in manner and form as in that behalf in the said information alleged.

Wherefore these claimants pray, that the said information may be dismissed, and that the said one hundred and twenty-three packages may be restored to the said claimants, and that they may be awarded damages, and their costs and charges in this behalf wrongfully sustained.

The said Benjamin F. Butler, attorney of the United States for the southern district of New York, saving and reserving to himself

and to the said United States, all benefit of exception to the uncertainties, imperfections, and insufficiencies of the said claim and answer of the said George Barclay, Anthony Barclay, and Schuyler Livingston, for a replication thereto says, that all and each of the several facts and matters and things alleged, and stated by him the said attorney in his said libel on behalf of the said United States are true, and that the matters and things alleged and stated by the said George Barclay, Anthony Barclay, and Schuyler Livingston, are not true.

Therefore, to try the issue above joined, let a jury come, at the next district court of the United States of America for the southern district of New York, to be held at the city of New York, in the said district, before the judge of the same court, on the first Tuesday in September next, by whom, &c., each of whom, &c., and who, &c., to recognise, &c., because as well, &c., the same day is given to the parties aforesaid, &c.

At which day and place above mentioned came the parties aforesaid, by their respective attorneys last aforesaid; and the said marshal did not return the said writ, nor did he do anything thereupon.

Therefore, as before, let a jury thereupon come, at the district court of the United States of America for the southern district of New York, in the said district, before the judge of the same court, on the first Tuesday in November, 1840, by whom, &c., each of whom, &c., and who, &c., to recognise, &c., because as well, &c., the same day is given to the parties aforesaid, &c., until the day the process between the said parties is continued.

At which day and place above mentioned came the parties aforesaid, by their respective attorneys last aforesaid, and the jurors of the jury whereof mention is within made, being summoned also [came], who, to speak the truth of the matters therein contained, being chosen, tried, and sworn, say, upon their oath, that they find a verdict for the United States against One hundred and twenty-three packages of goods, wares, and merchandise, containing glassware—that is to say: Sixty casks marked B T, G under, and numbered from 28 to 87, both numbers inclusive; nineteen casks marked L G, and numbered from 1 to 19, both numbers inclusive; twenty-four casks marked M W, and numbered from 1 to 24, both numbers inclusive; eighteen casks marked B H, and numbered *and numbered* from 1 to 18, both numbers inclusive; one cask marked D C, and numbered 1; one cask marked G F B, and numbered 1; all of which casks contain glassware imported in the brig Vesper, and so they say all.

Therefore it is ordered, adjudged, and decreed, that the three said cases of goods, wares, and merchandise mentioned and described in the said information as cases numbered, be, and the same are, condemned as forfeited to the use of the United States.

Judgment signed this fourth day of March, 1841.

FRED. J. BETTS, *Clerk.*
G. W. MORTON, *Dep. Clerk.*

As yet of the stated term of November, in the year of our Lord one thousand eight hundred and forty.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered, that before the honorable Samuel R. Betts, district judge of the district court of the United States for the southern district of New York, in the said district court at the city of New York, on this nineteeth day of November, in this same term of November, the issue joined upon an information filed in this court by Benjamin F. Butler, district attorney of the United States of America, on their behalf, against One hundred and twenty-three packages of glassware, viz: 60 casks marked B T G; nineteen casks marked L G; twenty-four casks marked M W; eighteen cases marked B H; one cask marked D G; and one cask marked G F B, seized by the collector of the port of New York; and George Barclay, Anthony Barclay, and Schuyler Livingston, claimants thereof as consignees thereof from Booth & Co. respondents, came on to be tried, and the jurors of the jury in this behalf, duly chosen and summoned, also come, and to try the said issue were elected, tried, and sworn.

And, therefore, to maintain the said issue on the behalf of the United States, the district attorney gave in evidence the entry of the said merchandise duly sworn to, and which is in the words following:

I, Schuyler Livingston, do solemnly and truly swear, that the invoice and bill of lading now produced by me to the collector of New York, are the true and only invoice and bill of lading by me received of all the goods, wares, and merchandise imported in the brig Vesper, whereof Brown is master, from Newcastle, for account of any person whomsoever for whom I am authorized to enter the same; that the said invoice and bill of lading are in the state in which they were actually received by me, and that I do not know or believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to said invoice and bill of lading; and that nothing has been on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; and that if at any time hereafter I discover any error in the said invoice, or in the account now rendered, of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

And I do further and solemnly swear, that to the best of my knowledge and belief, Booth & Co., of Sunderland, [are] the owners of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual

cost or fair market value at Sunderland, 30th March, 1839, of the said goods, wares, and merchandise; all the charges thereon, and no other or different discount, bounty, or drawback, but such as has been actually allowed on the same.

S. LIVINGSTON.

Sworn to this 4th June, 1839, before me,
GEORGE DAVIS, *D. Collector.*
GEO. W. COE, *Naval Officer.*

Entry of merchandise imported by Barclay & Livingston, in the brig Vesper, whereof Brown is master, from Newcastle.—New York, 3d June, 1839.

Marks.	Nos.	Packages and contents.	£.	s.	d.
				s.	d.
B T.	28	One cask cont'g 85 doz. tumblers,	1	9	7	9	2½
	29	One cask " 78½ doz. " "	6	17	8
	30	One cask " 44¼ doz. " "	3	18	7¼
	31	One cask " 47² doz. " "	4	2	6½
	32	One cask " 55² doz. " "	4	16	6½
	33	One cask " 54⁸ doz. " "	4	15	8
	34	One cask " 93⁸ doz. " "	8	3	11
	35	One cask " 50⁶ doz. " "	4	8	4½
	36	One cask " 56³ doz. " "	4	18	5¼
	37	One cask " 80³ doz. " "	7	0	5¼
	38	One cask " 63⁴ doz. " "	5	10	10
	39	One cask " 58 doz. " "	5	1	6
	40	One cask " 55² doz. " "	4	16	6½
	41	One cask " 46⁵ doz. " "	4	1	2¾
	42	One cask " 52³ doz. " "	4	11	5¼
	43	One cask " 50⁶ doz. " "	4	8	4½
	44	One cask " 45 doz. " "	3	18	9
	45	One cask " 49 doz. " "	4	5	9
	46	One cask " 45⁶ doz. " "	3	19	7½
	47	One cask " 46 doz. " "	4	0	6
	48	One cask " 55 doz. " "	4	16	3
	49	One cask " 46⁷ doz. " "	4	1	6¼
	50	One cask " 94⁷ doz. " "	8	5	6¼
	51	One cask " 45⁷ doz. " "	3	19	9¼
	52	One cask " 98⁷ doz. " "	8	12	6¼
	53	One cask " 97¹⁰ doz. " "	8	11	2¼
	54	One cask " 73⁷ doz. " "	6	8	9¼
	55	One cask " 75 doz. " "	6	11	3
	56	One cask " 63³ doz. " "	5	10	8¼
	57	One cask " 46⁵ doz. " "	4	1	2¾
	58	One cask " 44¹¹ doz. " "	3	18	7¼

STATEMENT—Continued.

Marks.	Nos.	Packages and contents.	£.	s.	d.
				s.	d.
B T.	59	One cask cont'g 44 11 doz. tumblers,	1	9	3	18	5½
	60	One cask " 85 7 doz. " "			7	9	9¼
	61	One cask " 48 9 doz. " "			4	5	3¾
	62	One cask " 89 10 doz. " "			7	17	2½
	63	One cask " 84 1 doz. " "			7	7	7
	64	One cask " 84 10 doz. " "			7	4	11½
	65	One cask " 57 doz. " "			4	19	9
	66	One cask " 53 3 doz. " "			4	13	2¼
	67	One cask " 53 11 doz. " "			4	14	4¼
	68	One cask " 57 3 doz. " "			5	0	2¼
	69	One cask " 53 7 doz. " "			4	13	9¼
	70	One cask " 58 doz. " "			5	1	6
	71	One cask " 56 doz. " "			4	18	0
	72	One cask " 56 6 doz. " "			4	18	10½
	73	One cask " 56 8 doz. " "			4	19	2
	74	One cask " 58 6 doz. " "			5	2	4½
	75	One cask " 56 doz. " "			4	18	0
	76	One cask " 55 3 doz. " "			4	16	8¾
	77	One cask " 58 doz. " "			5	1	6
	78	One cask " 58 doz. " "			5	1	6
	79	One cask " 58 doz. " "			5	2	4½
	80	One cask " 55 doz. " "			4	16	3
	81	One cask " 54 1 doz. " "			3	17	1¾
	82	One cask " 49 6 doz. " "			4	6	7½
	83	One cask " 44 7 doz. " "			3	18	0½
	84	One cask " 42 9 doz. " "			3	14	9¾
	85	One cask " 44 5 doz. " "			3	17	8¾
	86	One cask " 35 doz. " "			3	1	3
		" " 4 doz. " "			0	7	0
	87	One cask " 83 doz. " "			3	6	6
		" " 7 doz. " "			0	12	3
L C.	1	One cask " 40 doz. French Chimneys,	1	6	3	0	0
	2	One cask " 37 6 doz. " "			2	16	3
	3	One cask " 37 doz. " "			2	15	6
	4	One cask " 44 8 doz. " "			3	7	0
	5	One cask " 48 6 doz. " "			3	12	9
	6	One cask " 37 doz. " "			2	15	6
	7	One cask " 36 6 doz. " "			2	14	9
	8	One cask " 36 11 doz. " "			2	15	4½
	9	One cask " 41 doz. " "			3	1	6
	10	One cask " 38 6 doz. " "			2	17	9

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STATEMENT—Continued.

Marks.	Nos.	Packages and contents.	£.	s.	d.
L G.	11	One cask cont'g 39 doz. French Chimneys, s. d. 1 6	2	18	6
	12	One cask " 37^{9} doz. " "	2	16	$7\frac{1}{2}$
	13	One cask " 39^{2} doz. " "	2	18	9
	14	One cask " 35^{11} doz. " "	2	13	$10\frac{1}{2}$
	15	One cask " 38^{7} doz. " "	2	17	$10\frac{1}{2}$
	16	One cask " 39 doz. " "	2	18	6
	17	One cask " 39^{4} doz. " "	2	19	0
	18	One cask " 39 doz. " "	2	18	6
	19	One cask " 44 doz. " "	3	6	0
M W.	1	One cask " 36 doz. wines, 1 3	2	5	0
	2	One cask " 39^{8} doz. " "	2	9	7
	3	One cask " 32 doz. " "	2	0	0
	4	One cask " 34^{8} doz. " "	2	3	4
	5	One cask " 29^{10} doz. " "	1	17	$3\frac{1}{2}$
	6	One cask " 38 doz. " "	2	7	6
	7	One cask " 33 doz. " "	2	1	3
	8	One cask " 42^{3} doz. " "	2	12	$9\frac{3}{4}$
	9	One cask " 34 doz. " "	2	2	6
	10	One cask " 33^{6} doz. " "	2	1	$10\frac{1}{2}$
	11	One cask " 35 doz. " "	2	3	9
	12	One cask " 37 doz. " "	2	6	3
	13	One cask " 30 doz. " "	1	17	6
	14	One cask " 31^{4} doz. " "	2	9	2
	15	One cask " 33^{5} doz. " "	2	1	$9\frac{1}{4}$
	16	One cask " 32^{4} doz. " "	2	0	5
	17	One cask " 30^{6} doz. " "	1	18	$1\frac{1}{2}$
	18	One cask " 35^{4} doz. " "	2	4	2
	19	One cask " 31^{6} doz. " "	1	19	$4\frac{1}{2}$
	20	One cask " 33^{8} doz. " "	2	2	1
	21	One cask " 34 doz. " "	2	2	6
	22	One cask " 35^{4} doz. " "	2	4	2
	23	One cask " 28^{8} doz. " "	1	15	10
	24	One cask " 29^{2} doz. " "	1	16	$5\frac{1}{2}$
B H.	1	One cask " 39 doz. hocks, 2 0	3	18	0
	2	One cask " 24^{10} doz. " "	2	9	8
	3	One cask " 40^{3} doz. " "	4	0	6
	4	One cask " 59^{6} doz. " "	5	19	0
	5	One cask " 38^{8} doz. " "	3	17	4
	6	One cask " 34^{5} doz. " "	3	18	10
	7	One cask " 34^{10} doz. " "	3	9	8
	8	One cask " 30^{7} doz. " "	3	1	2

STATEMENT—Continued.

Marks.	Nos.	Packages and contents.	s. d.	£.	s.	d.
B H.	9	One cask cont'g 35^4 doz. hocks,	2 0	3	10	8
	10	One cask " 26 doz. " "		2	12	9
	11	One cask " 22^3 doz. " "		2	4	6
	12	One cask " 27^4 doz. " "		2	14	8
	13	One cask " 23 doz. " "		2	6	0
	14	One cask " 22^3 doz. " "		2	4	6
	15	One cask " 23^3 doz. " "		2	6	6
	16	One cask " 25^4 doz. " "		2	10	8
	17	One cask " 35^8 doz. " "		3	11	4
	18	One cask " 29^{10} doz. " "		2	19	8
D C.	1	One cask " 2^6 doz. decanters				
		1^6 doz. pint do				
		1^5 doz. tall 2 qt. do				
		$\frac{6}{12}$ doz. plain 2 qt. do				
		8 pints - -		4	4	4
G F B.	1	One cask cont'g 13^5 doz. finger basins		2	3	9
			£481 11 $8\frac{1}{2}$	481	11	$8\frac{1}{2}$

BARCLAY & LIVINGSTON.

462 40 G.
2,312 20
Glass *a* 2 c.

And the district attorney, further to maintain the said issue, introduced and read in evidence the invoice presented to the collector of the customs, which was in the words following:

Invoice of one hundred and twenty casks of flint glass shipped in the Vesper, Brown master, for New York, and consigned to Messrs. Barclay & Livingston, merchants there.

		lbs.	£	s.	d.
B T	28	569, 85 doz. 2 bst. gill tumblers 1 9, pr'd	7	9	$2\frac{1}{2}$
G.	29	511, 78 doz. 8 " " " " "	6	17	8
	30	289, 44 doz. 4 " " " " "	3	18	$7\frac{1}{4}$
	31	307, 47 doz. 2 " " " " "	4	2	$6\frac{1}{2}$
	32	361, 55 doz. 2 " " " " "	4	16	$6\frac{1}{2}$
	33	359, 54 doz. 8 " " " " "	4	15	8
	34	618, 93 doz. 8 " " " " "	8	3	11
	35	307, 50 doz. 6 " " " " "	4	8	$4\frac{1}{2}$

STATEMENT—Continued.

		lbs.						£	s.	d.
B T	36	362, 56 doz.	3 bst.	gill	tumblrs.	1	9, pr'd	4	18	5¼
G.	37	514, 80 doz.	3 "	"	"	"	"	7	0	5¼
	38	413, 63 doz.	4 "	"	"	"	"	5	10	10
	39	380, 58 doz.	"	"	"	"	"	5	1	6
	40	361, 55 doz.	2 "	"	"	"	"	4	16	6½
	41	291, 46 doz.	5 "	"	"	"	"	4	1	2¾
	42	341, 52 doz.	3 "	"	"	"	"	4	0	5¼
	43	322, 50 doz.	6 "	"	"	"	"	4	8	4½
	44	290, 49 doz.	"	"	"	"	"	3	18	9
	45	322, 49 doz.	"	"	"	"	"	4	5	9
	46	297, 45 doz.	6 "	"	"	"	"	3	19	7¼
	47	315, 46 doz.	"	"	"	"	"	4	0	6
	48	365, 55 doz.	"	"	"	"	"	4	16	3
	49	311, 46 doz.	7	-	-	-		4	1	6¼
	50	618, 94 doz.	7	-	-	-		8	5	6¼
	51	302, 45 doz.	7	-	-	-		3	19	9¼
	52	619, 98 doz.	7	-	-	-		8	12	6¼
	53	642, 97 doz.	10	-	-	-		8	11	2½
	54	488, 73 doz.	7	-	-	-		6	8	9¼
	55	499, 75 doz.		-	-	-		6	11	3
	56	427, 63 doz.	3	-	-	-		5	10	8¼
	57	315, 46 doz.	5	-	-	-		4	1	2¾
	58	283, 44 doz.	11	-	-	-		3	18	7½
	59	300, 44 doz.	10	-	-	-		3	18	5½
	60	365, 85 doz.	7	-	-	-		7	9	9¼
	61	324, 48 doz.	9	-	-	-		4	5	3¾
	62	596, 89 doz.	10	-	-	-		7	17	2¼
	63	571, 84 doz.	4	-	-	-		7	7	7
	64	539, 82 doz.	10	-	-	-		7	4	11½
	65	378, 57 doz.		-	-	-		4	14	9
	66	352, 53 doz.	3	-	-	-		4	13	2¼
	67	352, 53 doz.	11	-	-	-		4	14	4¼
	68	385, 57 doz.	3	-	-	-		5	0	2¼
	69	353, 53 doz.	7	-	-	-		4	13	9¼
	70	373, 58 doz.		-	-	-		5	1	6
	71	355, 56 doz.		-	-	-		4	18	0
	72	366, 56 doz.	6	-	-	-		4	18	10½
	73	372, 56 doz.	8	-	-	-		4	19	2
	74	385, 58 doz.	6	-	-	-		5	2	4½
	75	356, 56 doz.		-	-	-		4	18	0
	76	352, 55 doz.	3	-	-	-		4	16	8¾
	77	401, 58 doz.		-	-	-		5	1	6
	78	390, 58 doz.		-	-	-		5	1	6
	79	393, 58 doz.	6	-	-	-		5	2	4½

STATEMENT—Continued.

		lbs.	£	s.	d.
B T	80	356, 55 doz. - - -	4	16	3
G.	81	288, 41 doz. 1 ½ pint - -	3	17	1¾
	82	324, 49 doz. 6 - - -	4	6	7½
	83	313, 44 doz. 7 - - -	3	18	0½
	84	274, 42 doz. 9 - - -	3	14	9¾
	85	295, 44 doz. 5 - - -	3	17	8¾
	86	201, { 35 doz. best ⅓ pint tumb. printed 4 doz. ¼ pint - -	3	1	3
			0	7	0
	87	294, { 38 doz. ½ pint - - 7 doz. stars - -	3	6	6
			0	12	3
L C.	1	95, 40 doz. Fren. chimneys, 7 × 2, 1 6	3	0	0
	2	94, 37 doz. 6 " " " "	2	16	3
	3	96, 37 doz. 8 - - -	3	7	0
	4	116, 44 doz. 8 - - -	3	12	9
	5	122, 48 doz. 6 - - -	2	15	6
	6	87, 37 doz. - - -	2	14	9
	7	86, 36 doz. 6 - - -	2	15	4½
	8	87, 36 doz. 11 - - -	3	1	6
	9	97, 41 doz. - - -	2	17	9
	10	87, 38 doz. 6 - - -	2	18	6
	11	90, 39 doz. - - -	2	18	6
	12	89, 37 doz. 9 - - -	2	16	7½
	13	88, 39 doz. 2 - - -	2	18	9
	14	85, 35 doz. 11 - - -	2	13	10½
	15	89, 38 doz. 7 - - -	2	17	10½
	16	92, 39 doz. - - -	2	18	6
	17	92, 39 doz. 4 - - -	2	19	0
	18	91, 39 doz. - - -	2	18	6
	19	102, 44 doz. - - -	3	6	0
MW No.	1	111, 36 doz. muls and bowls, wines, 1 3	2	5	0
	2	124, 39 doz. 8 - - -	2	9	7
	3	106, 32 doz. - - -	2	0	0
	4	111, 34 doz. 8 - - -	2	3	4
	5	95, 29 doz. 10 - - -	1	17	3½
	6	120, 38 doz. - - -	2	7	6
	7	111, 33 doz. - - -	2	1	3
	8	138, 42 doz. 3 - - -	2	12	9¾
	9	107, 34 doz. - - -	2	2	6
	10	113, 33 doz. 6 - - -	2	1	10½
	11	114, 35 doz. - - -	2	3	9
	12	133, 37 doz. - - -	2	6	3
	13	108, 35 doz. - - -	1	17	6
	14	104, 31 doz. 4 - - -	2	9	2
	15	105, 33 doz. 5 - - -	2	1	9¼

STATEMENT—Continued.

		lbs.	£.	s.	d.
M W.	16	106, 32 doz. 4 - - -	2	0	5
	17	101, 30 doz. 6 - - -	1	18	1½
	18	116, 35 doz. 4 - - -	2	4	2
	19	103, 31 doz. 6 - - -	1	19	4½
	20	108, 33 doz. 8 - - -	2	2	1
	21	116, 34 doz. - - -	2	2	6
	22	114, 35 doz. 4 - - -	2	4	2
	23	103, 28 doz. 8 - - -	1	15	10
	24	97, 29 doz. 2 - - -	1	16	5½
B H.	1	123, 39 doz. best green pr. br. hocks, 2 0	3	18	0
	2	74, 24 doz. 10 - - -	2	9	8
	3	130, 40 doz. 3 - - -	4	0	6
	4	165, 59 doz. 6 - - -	5	19	0
	5	129, 38 doz. 8 - - -	3	17	4
	6	105, 34 doz. 5 - - -	3	8	10
	7	109, 34 doz. 10 - - -	3	9	8
	8	99, 30 doz. 7 - - -	3	1	2
	9	98, 35 doz. 4 - - -	3	10	8
	10	76, 26 doz. - - -	2	12	0
	11	66, 22 doz. 3 - - -	2	4	6
	12	80, 27 doz. 4 - - -	2	14	8
	13	72, 23 doz. - - -	2	6	0
	14	65, 22 doz. 3 - - -	2	4	6
	15	70, 23 doz. 3 - - -	2	6	6
	16	77, 25 doz. 4 - - -	2	10	8
	17	101, 35 doz. 8 - - -	3	11	4
	18	89, 29 doz. 10 - - -	2	19	8
D C.	1	274, 2 doz. 6 one ring syph. decanter and stopps. - -			
		1 doz. 6 pint - -			
		1 doz. 5 two qts. -			
		6 plain qts. - - -			
		8 " pint 274 c. 4d - -	4	11	4
G F B.	1	105, 13 doz. 5 best green finger basins, 105 lb. 5d. - -	2	3	9
			481	11	8½

BOOTH & COMPANY,
By JNO. FRENCH.

March 30*th*, 1839.

And the district attorney also read in evidence a certain affidavit, annexed to the said invoice, made by John French, one of the firm of Booth & Co., as evidence that they were manufacturers of the glass in question, which affidavit was in the following words:

I, John French, of Sunderland, county of Durham, solemnly, sincerely, and truly do swear that I and my partners, William Booth, Andrew White, and James Kent, trading under the firm of Booth & Co., are the true and lawful owners of certain goods, wares, and merchandise specified in the invoice hereunto annexed by the subscriber with the signature of our firm, consisting of one hundred and twenty casks of flint glass, shipped by us at the port of Newcastle-on-Tyne, on board the ship or vessel called the Vesper, of ———, whereof Brown is master, bound from Newcastle to New York, in the United States of America, and consigned to Mess. Barclay and Livingston, of New York; and that the sum of £481 11 8½ sterling, exhibited in and by the said invoice, is the true value of the said goods, wares, or merchandise, with the charges added in their present state where the same were manufactured, and that I and my partners are the manufacturers in Sunderland of such goods, wares, or merchandise as aforesaid, and are directly concerned in the profits of the art or trade of flint glass making, by which the same have been brought to their present state, and that the nett prices charged in the aforesaid invoice are the current value of the same at Sunderland, and such as I and my partners would have received if the same had been there sold in the usual course of trade; and that the said invoice contains no discounts, bounties, or drawbacks but such as have been actually allowed.

As witness my hand, this 30th day of March, 1839.

JOHN FRENCH.

SUNDERLAND.
Sworn before me,

ROBT. SMART,
A Master Extraordinary in High Court of Chancery in England.

And the district attorney, to maintain the said issue, called as a witness *Abraham B. Mead*, who, being sworn, testified that he was one of the principal appraisers of the port of New York, at the time of the entry of the goods in question, and for some years previously. That he inspected the merchandise in question; that his knowledge of the article not being critical, he called in merchants conversant with the article, and made the appraisal with their assistance, and subscribed the said appraisal, which appraisal was then read in evidence, and in effect appraised the contents of the packages marked $\frac{BT}{G}$ at three shillings and sixpence sterling per dozen; those of the packages marked LG, at three shillings and

sixpence per dozen; of those marked MW, at three shillings per dozen; of those marked BH, at three shillings and sixpence per dozen; of those marked DC at ten pence per pound weight; and of that GFB at ten pence per pound weight—such being the appraiser's estimate of the cost of the said merchandise at the time and place of the exportation of the same to the United States; that the appraisal also added six shillings for every cask, and one half per cent. for the shipping charges to and at the arrival of the merchandise at New York.

The said Abraham B. Mead further testified that the goods appraised were of fair merchantable quality.

The district attorney then introduced *John L. Gulliland* and *Robt. C. Wetmore*, the merchants called in by Mr. Mead, the principal appraiser, who testified that they had united with him in making the appraisement, and had signed the same.

The district attorney then introduced other witnesses, who testified on behalf of the United States in relation to the actual value of the said merchandise at the time and place of importation; some of which witnesses spoke of such value as greater, some as less than the appraisal, but all as being greater than the invoice; and the said witnesses also spoke of the quality of the merchandise, and that the prices had not varied in the foreign market and place of exportation, to any considerable extent, for many years; and among other witnesses the said district attorney called *Thomas D. Moore*, who, among other things, testified that he had been conversant with glassware of a similar description for many years; had not imported for the last ten years, but knew and had kept up his acquaintance with the foreign market, by information on the subject from persons who had visited England; and had enquired into the state of the glass market by the receiving of price currents and inspecting of invoices; that he had dealt extensively as buyer and seller here. On his cross examination, he testified that he knew the prices of the sales here; that such articles as the tumblers in question, at the cost stated in the invoice of one shilling and ninepence sterling per dozen, would, taking into view the charges on the importation and sales and the prices of the sales, afford a profit of thirty-three and a third per cent. on such invoice prices; that at an invoice cost of three shillings and sixpence per dozen, at the selling prices here, the importer would sustain a heavy loss; that the rate at which the goods were sold here would about cover a price of two shillings and ninepence sterling; the selling price of such tumblers was from ninety to one hundred cents per dozen by the quantity, at six months credit.

Andrew T. Hall, a witness for the United States, testified, among other things, that he was a dealer in the article, and that at no time during the last twelve years, could a dealer afford to pay over two shillings and three pence per dozen for such tumblers as those seized, because you could obtain them at so much more favorable prices

from the consignees here of the foreign manufacturers; you could purchase from them at from ninety to one hundred cents per dozen.

Sundry other witnesses were examined on the part of the United States, touching the quality of the merchandise in question, and the value of the articles at the place of exportation.

And the counsel of the claimants, to prove the said issue on their part, read in evidence certain depositions taken under a commission issued to Sunderland, in England, and among others the deposition of James Ritchie; which *James Ritchie*, among other things, testified, that he was packer to Messrs. Booth & Co. of Deptford, flint glass manufacturers; was aged forty-six years; that he knew of the shipment of glassware in question, and the invoice thereof; that the invoice (a copy of which was annexed to the deposition) exhibits the fair market value at Deptford, Sunderland, and in its vicinity, at the date of the said invoice of the glassware therein referred to, including all the charges thereon; that his knowledge was obtained by occasionally selling goods in Booth & Co.'s warehouse, and by having access to their books at all times. Before he entered the service of Messrs. Booth & Co., he was warehouse clerk for four years with the Edinburgh, Glasgow, and Alloa Flint glass Company, at Alloa, in Scotland, and sold all the glass in the warehouse there, and kept the day-book, and made out most of the invoices. The quality and description of the glassware in question is inferior to that made for home consumption; for instance, glass made for home consumption, a much finer sort of lead is used than in that made for exportation; also soda ash is used instead of the best American pearlash, the former of which produces a quality that would not be used generally in the English market, not being sufficiently good for the best articles. In articles of the same denomination the quality differs very much; for instance, in shipments for London or the English market, there is always a refuse not saleable, but which is set aside for exportation. Booth & Co., in manufacturing for exportation, work the pots clean out, in order to have the finest and purest of the metal; accordingly, goods manufactured for exportation, on an average, do not produce the same price as those manufactured for home consumption, by about one penny per pound. That he has looked at the samples of the glassware, (which were taken from the packages under seizure,) and supposing that the packages of glassware enumerated in the invoice corresponded with the said samples, the fair market value, including all charges thereon, at the date of the invoice of the tumblers in casks B T G, would be seven pence per pound—of the French chimneys, in casks L G, two shillings per dozen—of the wines, M W, two shillings and three pence per dozen—of the bowl hocks, B H, would be one shilling per pound—and of the green finger-basins, about eight pence per pound; but these prices are subject to the following deductions, namely: fourteen per cent. for freight, wharfage, insurance, discount, and breakage, besides the drawback and bounty, and about one penny per pound, in respect of the inferior qual-

ity of the metal. That he had known of actual sales of glassware of the same quality and description as that mentioned and referred to in the said invoice, at Deptford, at or about the date of the said invoices, at prices similar to those charged in the said invoice, allowing for the same deduction before mentioned.

And the counsel of the defendant gave in evidence the deposition of John Stevenson, of Deptford, warehouse clerk of Booth & Co.; the deposition of Jno. Sowerby, of Shipcote, near Gatehead, in the county of Durham, flint glass manufacturer; and of William Young, of Newcastle-of-Tyne, agent to the Northumberland glass company, all tending to prove the same matters as the deposition of the said William Ritchie.

It was also in proof, that the drawback on the exportation of glass was two pence and one farthing per pound.

The claimant's counsel gave other evidence, to support the issue on their part, and also called *James Wilson*, who made oath, that for two years and a half last past he has been conversant with the importation and sales of glasswares from the Tyne river and its vicinity, and the claimants there offered to prove, that according to the ordinary charges upon importations of glassware from the manufactories on the river Tyne, and the rate of duty at the time of the importations, glassware of the kind in question, at an invoice cost of one shillling and ninepence per dozen for tumblers, and at that rate for the other glass, and at the selling price in New York of ninety-eight cents per dozen, would yield a remittance of one shilling and tenpence halfpenny, and no more; at the invoice cost of two shillings and ninepence per dozen for tumblers, would yield a remittance of one shilling, and no more; and at the invoice cost of three shillings and sixpence per dozen for tumblers, would yield a remittance of one shilling and , and no more; to the admission of which testimony, the counsel on behalf of the United States objected, and the court rejected and refused to admit the same, but decided, that evidence was admissable of the actual charges upon the importation, exclusive of the fact of the price of sales and the charges on such sales; unto which rejection of the evidence so offered, the counsel of the claimants then and there excepted.

And after other evidence on behalf of each party, the said parties respectively rested their case.

And the counsel of the claimants then and there insisted, among other things, and requested the judge to charge the jury, that although the evidence of the appraiser might be sufficient, in the absence of all proof, to warrant the finding a verdict for the United States; yet, that after proof on the part of the claimants tending to show that the invoice and packages were not made up with intent to evade or defraud the revenue, the claimants were entitled to the ordinary rule of law by which innocence should be presumed rather than guilt, and that in case of a doubt not resulting from a fraudu-

lent withholding of testimony, the claimants were to have the benefit of such doubt, and the finding in relation thereto should be in favor of the claimants; but the learned counsel, in behalf of the United States, insisted to the contrary; and the learned judge thereupon in this behalf charged the jury, that the revenue laws assumed that appraisers here could know and determine the foreign cost and market value of merchandise, and that if upon their appraisement the invoice was found undervalued or at under price, the articles became subject to duties according to the appraisement unappealed from, was conclusive; and that upon return of such appraisement, the collector might at his discretion seize the goods as forfeited, because of such undervaluation being made with intent to defraud the revenue, but that such appraisement was not conclusive evidence to produce the forfeiture; that any party having an interest in the goods might come in and claim them, and contest the ground of forfeiture; but the prosecution being *in rem* against the thing as a forfeited thing, if the invoice was found made up with intent to evade or defraud the revenue, the goods would be forfeited, whether the owner or claimant in the suit were privy thereto, or conversant thereof, or not; that a claimant coming in to claim the goods is to be deemed an actor or party taking the affirmative in the cause, and if a prima facie case of false valuation in the invoice, with intent to evade or defraud the revenue, is made by the evidence on the part of the United States, the claimant must clearly and fully make out, by proof on his part, a title to an acquittal and restoration; that then it becomes analagous to an action or claim prosecuted in other countries, to reclaim goods from condemnation when they are subjected to forfeiture on the act of seizure, without previous trial or judicial investigation; that it was not like an action for a penalty, when the government or party claiming the penalty must make out his proof fully, and when the defendant could not stand on the general presumption of his integrity, until the contrary was clearly shown. But in these proceedings *in rem*, the goods were, by the appraisement and seizure on proofs amounting to probable cause, therefore placed in the predicament of forfeiture, and the claimant must take them therefrom by clear and full proof as a plaintiff or actor in other cases; that evidence on his part merely sufficient to create doubts as to the accuracy of the appraisement, would not be sufficient to entitle him to a verdict acquitting the goods, and that he must rebut and overcome the prima facie case made against the goods by appraisement, and other evidence on the part of the United States, before such a verdict could be justly given, and the presumption in a case of doubt was not to decide the case in his favor.

Unto which charge, in this behalf, the counsel of the claimants then and there excepted.

And the counsel of the claimants further insisted before the said judge, and requested him to charge the said jury, that the claim-

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ants having, under the law, made oath to the invoice, as showing the actual market value of the said merchandise, a finding to the contrary ought not to be had without such evidence as would induce the jury to believe the oath intentionally false; and that the jury were not to presume any fraud or false swearing without full proof thereof; and in case they were not fully satisfied by the proof of the false valuation with intent to evade or defraud, they should give the benefit of their doubt to the claimants.

But the counsel of the United States insisted to the contrary.

Whereupon the learned judge, in behalf of the United States, further charged the jury in this behalf, that the affidavit accompanying the invoice was not to be looked to by them at all as evidence in the case. That it was not taken as evidence; was given without the presence of the adverse party, or any notice to him; was a voluntary affidavit of the party in his own behalf; and was merely a custom-house document required to accomplish the entry. That it was not a judicial oath, on which the party could be indicted, and was no higher evidence than the invoice itself, or a letter of the party; and that the claimants were not entitled to any presumption in their favor as to its verity, or to the benefit of any doubt, so far as this allegation of the claimants was concerned.

Unto which charge in this behalf the said issue was left to the jury, who thereupon found that the merchandise in the information mentioned was forfeited to the United States in manner and form as the district attorney of the United States hath in this behalf alleged.

And because the matters offered in evidence, and the matters so decided aforesaid by the said district judge, do not appear by the record of the said verdict, the claimants have caused the same, and the exceptions by them in this behalf taken, to be reduced to writing, and have prayed the same to be signed and sealed by the district judge aforesaid, according to the form of the statute, &c.

And the said district judge has therefore set his hand and seal to this bill of exceptions, containing the same, the day and year herein first above written.

SAM'L R. BETTS, [L. S.]
F. R. TILLON, *Attorney.*

SATURDAY, *April* 24, 1841.

U. S. Circuit Court for the southern district of New York.

The court met pursuant to adjournment, and is opened by proclamation.

Present: The honorable Smith Thompson, an associate justice of the Supreme Court of the United States.